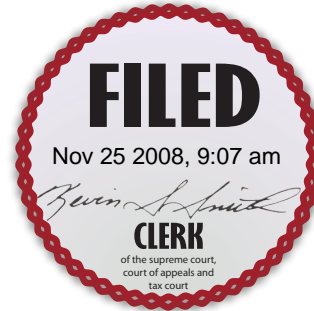


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

THURMAN LEE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0804-CR-382

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice, Jr., Judge
Cause No. 49G02-0706-FA-105949

November 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Thurman Lee (“Lee”) appeals the seventy-five-year sentence imposed upon his convictions for Burglary, as a Class A felony,¹ enhanced because of his adjudication as a Habitual Offender,² Robbery, as a Class C felony,³ and Criminal Confinement, as a Class D felony.⁴ We affirm.

Issue

Lee presents a sole issue for review: whether his sentence is inappropriate.

Facts and Procedural History

During the morning of June 10, 2007, sixty-two-year-old Sandra Dangerfield was working in her yard in the 3900 block of Illinois Street in Indianapolis when she heard her telephone ring and went inside her house to answer it. While she was on the telephone, Dangerfield heard a loud noise as her back door was forced open. A man Dangerfield later identified as Lee struck Dangerfield and knocked her down. Lee “kicked and stomped” Dangerfield, demanding “Give me your money. Give me your money.” (Tr. 56.)

As Lee rifled through some of Dangerfield’s possessions, Dangerfield attempted to get up. Lee knocked her down again. Dangerfield pointed to her purse on her sofa. She then moved toward the front door. Lee slammed Dangerfield’s hand in the door before she was able to escape and run to a nearby store to summon police.

¹ Ind. Code § 35-43-2-1.

² Ind. Code § 35-50-2-8.

³ Ind. Code § 35-42-5-1.

⁴ Ind. Code § 35-42-3-3.

Dangerfield's purse, with Lee's fingerprint on some of the contents, was recovered from a nearby abandoned house. Dangerfield identified Lee from a photographic array, and he was charged with Burglary, as a Class A felony, Robbery, as a Class A felony, Aggravated Battery, as a Class B felony, and Criminal Confinement, as a Class B felony. On August 20, 2007, the State alleged that Lee is a habitual offender.

On March 10, 2008, Lee was brought to trial before a jury. Lee was convicted of the charges against him and admitted the truth of the habitual offender allegation. On March 26, 2008, the trial court entered judgment upon the Class A felony Burglary conviction, entered judgment upon the Robbery count as a Class C felony, and entered judgment upon the Confinement count as a Class D felony. The trial court vacated the Aggravated Battery conviction.

Lee was sentenced to consecutive sentences of forty years for Burglary, enhanced by thirty years based upon the habitual offender adjudication, four years for Robbery, and one year for Confinement. Thus, Lee's aggregate sentence is seventy-five years. He now appeals.

Discussion and Decision

A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty and fifty years, with the advisory sentence being thirty years. See Ind. Code § 35-50-2-4. A person who commits a Class C felony shall be imprisoned for a fixed term of between two and eight years, with the advisory sentence being four years. See Ind. Code § 35-50-2-6. A person who commits a Class D felony shall be imprisoned for a fixed term of

between six months and three years, with the advisory sentence being one and one-half years. See Ind. Code § 35-50-2-7.

Lee requests that we reduce his Class A felony sentence to the advisory term of thirty years (enhanced by thirty years) and order the Class C and Class D felony sentences to be served concurrently, resulting in an aggregate sentence of sixty years. Indiana Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender.”

With regard to the nature of the offense, the advisory sentence is the starting point in our consideration of an appropriate sentence for the crime committed. Childress v. State, 848 N.E.2d 1073, 1081 (Ind. 2006). Here, Lee broke into Dangerfield’s residence and perpetrated vicious and gratuitous violence upon her. Lee knocked the sixty-two-year-old woman to the floor and then repeatedly kicked, struck, and stomped on her. Lee attempted to prevent Dangerfield’s escape by slamming her hand in her front door.

Dangerfield’s left eye was swollen shut and her right eye was bloodshot. She lost vision in one eye for months. Dangerfield suffered an eight-centimeter wound on her scalp that required eleven staples to close. She also endured sixty-five stitches to close the wounds on her face and head. Two of her teeth were knocked loose. Dangerfield also suffered severe bruising on her leg, arm, and shoulder. Her left ring finger was dislocated and fractured, and she had to undergo two surgeries to implant a plate and screws. As of the time of trial, Dangerfield still needed an additional hand surgery and dental work.

As to the character of the offender, Lee has a lengthy criminal history dating back to 1988. He has five prior felony convictions (including burglary, three convictions for theft, and attempting to obtain a controlled substance by fraud). He has five misdemeanor convictions, including battery and conversion. He has violated probation on five occasions. He was on parole at the time of the instant offense. Lee's character is such that he has failed to benefit from prior rehabilitative efforts and has continued to use drugs.

By the time of Lee's sentencing, the State had charged him with three additional crimes. The State alleged that Lee committed robbery and burglary on April 26, 2007, and that he beat the victim unconscious. The State also alleged that, on March 31, 2007, Lee struck an eighty-nine-year-old man and stole his wallet and, on April 12, 2007, held a victim at knifepoint and committed criminal deviate conduct and robbery.

In sum, the nature of Lee's crimes, including the fact that there were multiple offenses, together with the character of the offender militate toward sentences greater than the advisory and concurrent sentences Lee suggests. Lee received a Class A felony sentence above the advisory term but less than the maximum term. He received an advisory sentence for the Class C felony and a sentence less than the advisory for the Class D felony. He has not persuaded us that his seventy-five-year aggregate sentence is inappropriate.

Affirmed.

RILEY, J., and BRADFORD, J., concur.